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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Atty. Docket: EDELMAN=1

In re Application of:	)	Conf. No.: 1629
	)	
Meir EDELMAN et al	)	Art Unit: 1638
	)	
Appln. No.: 09/529,172	)	Examiner: A.D. MEHTA
	)	
Filed: April 10, 2000	)	Washington, D.C.
	)	
For: TRANSGENIC LEMNACEAE	)	September 23, 2004
	)	
	)	

COMMUNICATION

Honorable Commissioner for Patents  
U.S. Patent and Trademark Office  
2011 South Clark Place  
Customer Window, Mail Stop \_\_\_\_\_  
Crystal Plaza Two, Lobby, Room 1B03  
Arlington, VA 22202

Sir:

Attached hereto is a photocopy of a communication filed on even date herewith in the Patent and Trademark Office to the attention of the Office of Patent Legal Administration. The attached communication requests recognition of the Jansen Lemnaceae Depository as a suitable depository, as defined in 37 C.F.R. §1.803.

As soon as the Jansen Lemnaceae Depository is officially recognized as being suitable by the Patent and Trademark Office, appropriate biological material deposit

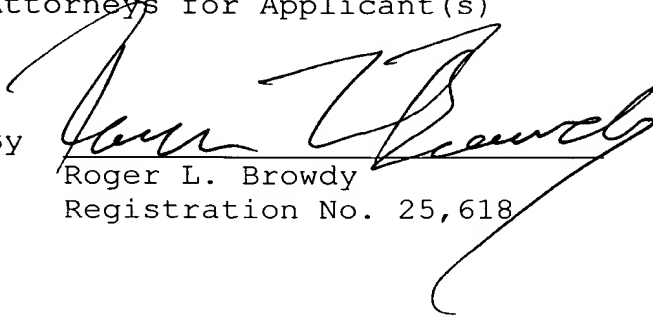
In re of Appln. No. 09/529,172

documentation can be filed in this case in order to obviate  
the sole remaining objection.

Respectfully submitted,

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Attn: Office of Patent Legal Administration

Re: Request for Recognition as Suitable Depository  
Jansen Lemnaceae Depository

Sir:

The patent rules at 37 C.F.R. §1.801-1.809 provide for the deposit of biological material for the purposes of patents or inventions under 35 U.S.C. §101. Acceptable depositories are defined in 37 C.F.R. §1.803 and 37 C.F.R. §1.803(a)(2) provides that even if a depository is not an International Depository Authority (IDA) as established under the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, a depository can be recognized to be suitable by the Patent and Trademark Office. In order to be recognized as suitable by the Office, 37 C.F.R. §1.803(b) provides that a communication must be directed to the Director, providing the information as specified in that regulation. Furthermore, MPEP ¶2405 states that it is not the intention of the Office to recognize as suitable any organization where the need for a suitable depository for patent purposes is being met by depositories recognized as IDAs under the Budapest Treaty.

The present communication is being filed on behalf of Jansen Lemnaceae Depository. There is a need for this depository to be accepted as "suitable" as, to the best of the knowledge and belief of the undersigned, none of the Budapest Treaty depositories listed at MPEP ¶2405 will accept a deposit of a plant of the family Lemnaceae.

All of the information required by the applicable regulation follows. It is requested that this depository be recognized by the Director as being suitable, and that notice of same be published in the Official Gazette of the Patent and Trademark Office.

The following information is provided in response to each section of 37 C.F.R. §1.803(b), which states:

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Request for Recognition as Acceptable Depository

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(b) A depository seeking status under paragraph (a)(2) of this section must direct a communication to the Director which shall:

(1) Indicate the name and address of the depository to which the communication relates;

Name: Jansen Lemnaceae Depository.  
Address: c/o Dr. M.A.K. Jansen  
Department of Plant Sciences (ZEPS)  
University College, Cork, Distillery Field  
North Mall, Cork, Ireland

(2) Contain detailed information as to the capacity of the depository to comply with the requirements of paragraph (a)(2) of this section, including information on its legal status, scientific standing, staff, and facilities;

The following details required by (a)(2) are provided.

(a)(2) ... The depository must:

(i) Have a continuous existence;

Dr. M.A.K. Jansen has held, cultured and stored various *Spirodela* and *Lemna* species and lines in his laboratory facilities continuously since 1997.

(ii) Exist independent of the control of the depositor;

The depository is part of Dr. M.A.K. Jansen's facilities at the Department of Plant Sciences (ZEPS), University College Cork, Distillery Field, North Mall, Cork, Ireland. The depository exists independent of the control of the proposed depositor of the first lines in this patent depository, which is Dr. Meir Edelman of the Weizmann Institute of Science, Rehovot, Israel.

(iii) Possess the staff and facilities sufficient to examine the viability of a deposit and store the deposit in a manner which ensures that it is kept viable and uncontaminated;

The depository is supported by Dr. Jansen, his staff and his facilities. His facilities currently hold, examine the viability and store a number of axenic species and strains of plants. This activity is routine.

- (iv) Provide for sufficient safety measures to minimize the risk of losing biological material deposited with it;

The depository maintains separate liquid and solid medium cultures, while holding a given species for at least two transfers before discarding the oldest sample. Temperature-control safety devices minimize the risk of overheating.

- (v) Be impartial and objective;

Dr. Jansen, who heads the depository, is an internationally recognized scientist who has served as project leader in national grants which require impartiality and objectivity.

- (vi) Furnish samples of the deposited material in an expeditious and proper manner;

Dr. Jansen has furnished *Spirodela* and *Lemna* plants to a number of scientists in the past who have indicated that the samples arrived safely and expeditiously.

- (vii) Promptly notify depositors of its inability to furnish samples, and the reasons why;

Dr. Jansen's facilities include means for electronic mail which will enable prompt notification and explanation to the depositor, or any other requestor, in the event that samples cannot be supplied.

The remaining information required by §1.803(b) is as follows:

- (3) Indicate that the depository intends to be available, for the purposes of deposit, to any depositor under these same conditions;

The depository will be available for deposit by any depositor of axenic cultures of *Spirodela punctata* line 8717, *Lemna gibba* var. *Hurfeisch* or *Spirodela oligorrhiza* (also known as *Spirodela oligorrhiza* Hegelm SP and *Spirodela punctata* Hegelm), under the same conditions detailed herein.

(4) Where the depository intends to accept for deposit only certain kinds of biological material, specify such kinds:

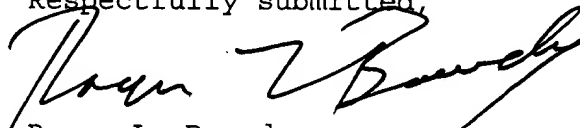
The depository intends to accept for deposit only *Spirodela punctata* line 8717, *Lemna gibba* var. Hurfeisch and *Spirodela oligorrhiza* (also known as *Spirodela oligorrhiza* Hegelm SP and *Spirodela punctata* Hegelm). All of these are members of the family *Lemnaceae*.

(5) Indicate the amount of any fees that the depository will, upon acquiring the status of suitable depository under paragraph (a)(2) of this section, charge for storage, viability statements and furnishing of samples of the deposit.

At present it is not contemplated that any fee will be charged. However, in the future, a small fee to cover expenses may be instituted.

As all of the requirements of 37 C.F.R. §1.803 have been met, recognition of Jansen Lemnaceae Depository as a suitable depository so as to be acceptable to receive deposits in accordance with 37 C.F.R. §1.803, and publication of notice thereof in the Official Gazette of the Patent and Trademark Office, are earnestly solicited.

Respectfully submitted,



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Attorney for Jansen Lemnaceae  
Depository  
Registration No. 25,618